

# 91st Illinois General Assembly

## Senate Transcript

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STATE OF ILLINOIS  
91ST GENERAL ASSEMBLY  
FIRST SPECIAL SESSION  
SENATE TRANSCRIPT

4th Legislative Day

December 16, 1999

PRESIDING OFFICER: (SENATOR MAITLAND)

Senate will come to order. Will our Members please be at their seats? Would our guests in the galleries please rise? Our prayer today will be given by Senator Brad Burzynski. Senator Burzynski.

SENATOR BURZYNSKI:

(Prayer by Senator Brad Burzynski)

PRESIDING OFFICER: (SENATOR MAITLAND)

The Pledge of Allegiance to the Flag. Senator Todd Sieben.

SENATOR SIEBEN:

(Pledge of Allegiance, led by Senator Sieben)

PRESIDING OFFICER: (SENATOR MAITLAND)

Reading of the Journal. Senator Myers.

SENATOR MYERS:

...President, I move that reading and approval of the Journals of Tuesday, December 14th, and Wednesday, December 15th, in the year 1999, be postponed, pending arrival of the printed Journals.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Myers moves to postpone the reading and approval of the Journal, pending arrival of the printed transcripts. There

being no objection, it is so ordered. Committee Reports.

SECRETARY HARRY:

Senator Klemm, Chair of the Committee on Executive, reports  
Senate Amendment No. 2 to House Bill 1285 Be Adopted.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senate will stand at ease to the call of the Chair.

(SENATE STANDS AT EASE/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR DUDYCZ)

Messages. Senate will come to order. Committee Reports.

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SECRETARY HARRY:

Senator Weaver, Chair of the Committee on Rules, reports the  
following Legislative Measures have been assigned: Refer to the  
Committee on Executive - Senate Amendment 3 to House Bill -- or,  
to Senate Bill -- House Bill 1285. Senate Amendment 3 to House  
Bill 1285.

PRESIDING OFFICER: (SENATOR DUDYCZ)

Senator Klemm, what purpose do you rise? Senator Klemm.

SENATOR KLEMM:

For the purposes of an announcement. The Senate Executive Committee will be meeting at 2:25 in Room 212 today. 212, at 2:25, Senate Executive Committee. Thank you.

PRESIDING OFFICER: (SENATOR DUDYCZ)

Thank you, Senator. Senator Karpiel, what purpose do you rise?

SENATOR KARPIEL:

Thank you, Mr. Chairman. To announce a Republican Caucus immediately in Senator Philip's Office.

PRESIDING OFFICER: (SENATOR DUDYCZ)

Senate Republican Caucus in the Senate President's Office immediately. Senate Executive Committee will be meeting in Room 212 at -- at 2:25 this afternoon. The Senate will stand at ease.

(SENATE STANDS AT EASE/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR MAITLAND)

Senate will come to order. ...Reports.

SECRETARY HARRY:

Senator Klemm, Chair of the Committee on Executive, reports Senate Amendment 3 to House Bill 1285 Be Adopted.

PRESIDING OFFICER: (SENATOR MAITLAND)

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...Television, WMAQ-TV Chicago requests permission to videotape, and Randy Squires with Associated Press requests permission to -- for still photography in the Chamber. Is leave granted? Leave is granted. ...addition, Paul Wheeler, WGN-TV, requests permission to videotape the proceedings. Is leave granted? Leave is granted. All right. Ladies and Gentlemen, on page 2, top of -- of your Calendar, is House Bill 1285. Senator Petka, do you wish this bill returned to the Order of 2nd Reading for the purpose of amendment? Senator Petka does seek leave of the Body to return House Bill 1285 to the Order of 2nd Reading for the purpose of an amendment. Hearing no objection, leave is granted. On the Order of 2nd Reading is House Bill 1285. Mr. Secretary, are there any Floor amendments approved for consideration? I am reliably informed that the sponsor wishes to not hear Amendments 1 and 2.

SECRETARY HARRY:

Amendment No. 3, offered by Senators Petka and Philip.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka.

SENATOR PETKA:

Thank you, Mr. President and Members of the Senate. Senate Amendment No. 3 to House Bill 1285 was just heard in the Senate Executive Committee. I would like to move this to 3rd -- 3rd Reading for purposes of -- of discussion. And I would move its

adoption at this time.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka has moved the adoption of Floor Amendment No. 3 to House Bill 1285. All those in favor, say Aye. Opposed, Nay. The Ayes have it, and the motion is adopted. Are there any further Floor amendments approved for consideration, Mr. Secretary?

SECRETARY HARRY:

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No further amendments reported.

PRESIDING OFFICER: (SENATOR MAITLAND)

3rd Reading. Senator -- Senator Demuzio, for what purpose do you arise, sir?

SENATOR DEMUZIO:

In the absence of our Caucus Chair, there'll be a Democratic Caucus immediately, sir.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Demuzio, that request is in order. Thirty minutes? Can you do it in thirty minutes?

SENATOR DEMUZIO:

Well, Mr. President, you've already had a caucus. I don't

know where all of our Members are. I assume that they're within the purview of our -- of our voice. Perhaps maybe -- maybe just a wee bit longer than that, perhaps.

PRESIDING OFFICER: (SENATOR MAITLAND)

We did -- we did ring the bell several times, requesting that they come to the Floor. We had earlier asked if you wanted to have a -- a caucus. So, as quickly as -- as you could, Senator Demuzio.

SENATOR DEMUZIO:

We didn't have the language that you had, so we have to make copies of the language for all of the Members, as well...

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Jones, for what purpose do you arise, sir?

SENATOR E. JONES:

Yeah. Thank you, Mr. President. Just out of due respect, you know, the Members have been hanging around here for -- they're in the fourth day, and not knowing -- I do know that you did have a caucus and your Members had an opportunity to go over this. Our Members -- and you -- since you control the process here, you know when you're coming in, so you -- you probably told your Members to

stick very close. So our people are scattered. So in the essence of fairness, just give us time to have -- round up all our Members so that they can adequately look at this, here, terrible proposal.

PRESIDING OFFICER: (SENATOR MAITLAND)

All right. The -- the Senate will stand in recess to -- until 3:45.

(SENATE STANDS IN RECESS/SENATE RECONVENES)

PRESIDENT PHILIP:

The Senate will please come to order. Senator Karpriel.

SENATOR KARPIEL:

Thank you, Mr. President. There will be a Republican Caucus in Senate President's Office. Fifteen-minute caucus?

PRESIDENT PHILIP:

Fifteen-minute caucus.

SENATOR KARPIEL:

Fifteen-minute caucus, immediately.

PRESIDENT PHILIP:

The Senate stands at ease for fifteen minutes.

(SENATE STANDS AT EASE/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR MAITLAND)

The Senate will come to order. WCIA Channel 3 and -- and WICS-TV Channel 20 request permission to videotape. Is leave granted? Leave is granted. Top of page 2 on your Calendar is

House Bill 1285. House Bills 3rd Reading. Senator Petka. Read the bill, Mr. Secretary.

SECRETARY HARRY:

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House Bill 1285.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MAITLAND)

Ladies and Gentlemen, we have a lot of people in the Chamber, and we're going to request that you not visit, that you pay attention to the speakers. Senator Petka.

SENATOR PETKA:

Thank you, Mr. President, Members of the Senate. Senate Floor Amendment No. 3 to House Bill 1285, which was adopted on 2nd Reading and moved to 3rd, would provide for reenactment of the so-called Safe Neighborhoods Act. Earlier this month, the Illinois Supreme Court struck down Public Act 88-680 for violation of the single-subject rule. Shortly thereafter, a number of individuals, who do not serve in this elected Body, indicated at -- through the media and at various press conferences, that if we did not act in an expeditious manner, that literally thousands of



individuals who were convicted under that Act would be released and flooding the streets. We were called into Special Session for the single purpose of acting on what some would say was a clear and public danger -- public safety -- clear and present danger. The measure that you have before you that is the topic of discussion, and hopefully enactment, this evening provides an alternative punishment under a portion of this bill. I would like to very, very briefly explain why, in my opinion, that the adoption of this amendment and adoption of this bill is necessary and proper use of the police power of this State. It became very apparent at the committee hearings that were held in connection with this legislation that certain concerns were raised about the use of prosecutorial discretion and the possible abuse. What we have attempted to do, in connection with the Floor amendment that has been adopted, is to codify existing procedure and to permit

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prosecutors to do something that they literally have been doing since statehood. The origin of this proposal is basically based -- it comes from personal experience, myself. When I first became an assistant State's attorney twenty-eight years ago, we had on -- on the statutes of the State of Illinois a process by which a

prosecutor could charge an individual for the same conduct under the same statute either as a felon or a misdemeanor, depending on the discretion of the prosecutor and depending on the instrument that basically framed the charge. It was that discretion and grant of power from the General Assembly that was made to a prosecutor that was challenged in this State. A person who was convicted of an offense, in case of People versus Morrissey, claimed that the Illinois Legislature is empowered to determine penalties -- or, excuse me, can determine the penalties, but that the State, by delegating this power to a prosecutor - that is, giving the prosecutor the discretion of making a judgment as to whether or not a felony or a misdemeanor should be charged - that this violated the Constitution. The Illinois Supreme Court, in that case and cases that have been -- that have subsequently been -- followed, indicated very clearly - very, very clearly - that prosecutors, indeed, have -- have been vested with a large amount of discretion. Like to just recapitulate exactly what the -- the courts have said in connection with the discretion that prosecutors would -- have enjoyed historically: The State's Attorney, as a representative of the people, has the duty to prosecute all criminal actions. It is his sole responsibility to evaluate the evidence and other relevant factors to determine what offenses can and should properly be charged. It is within the exclusive discretion of the State's Attorney to choose which of several charges to bring against a defendant or whether to prosecute them at all. Our Supreme Court has repeatedly rejected arguments that challenge the asserted, unbridled discretion of the

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prosecutor in charging a felony or a misdemeanor where the defendant's conduct comprises either offense. And that was precisely the issue that went before the Supreme Court in 1972, and it was precisely the issue that the Supreme Court held: That, in fact, the prosecutor possesses such discretion because it is his responsibility, as an elected representative of the people of the State of Illinois, to evaluate evidence and other pertinent factors and determine what offense can properly and should properly be charged. There have been those who have made statements outside of the Legislative Body who have challenged, for various reasons, the constitutionality of the -- of Senate Amendment No. 3, House Bill 1285, in the Section dealing with the unlawful use of -- of weapons, which actually is a misnomer. What we're talking about is unlawful possession of a firearm in certain circumstances. The argument that was made, in that in giving this type of discretion to a prosecutor, that we may be violating Article I of Section 11 of the Illinois Constitution. That issue had been addressed in the Morrissey case, but we did change Constitutions in -- in the year of 1970, and the provision dealing with Article I, Section 11, actually was refined. It now reads: "All penalties shall be determined both according to the

seriousness of the offense" - proportionality - "and with the objective of restoring the offender to useful citizenship." Now, that's something we don't talk about too much these days; that in the Constitution that we adopted, that we are not only going to be worrying about the proportionality of the punishment, but when we are doling out the punishment, that, under our Constitution, we have to do this with the objective of restoring the offender to useful citizenship. And I would submit to this Body that the language that we have placed into our amendment does precisely that. It balances, in a very real way, the competing interests that are involved here: public safety, with the opportunity of a

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prosecutor who, in the exercise of his discretion, makes the determination that the individual may be a member of a street gang, that the individual has a prior criminal history, that the individual may be in possession of drugs, that the individual's -- by the various facts and circumstances and the nature of the arrest, that this person should be charged with a felony, and we will not compromise public safety by simply charging this person with a felony, with all of the consequences of a felony conviction. If, on the other hand, the prosecutor decides that

based upon the discretion that he has enjoyed historically since the -- since we became a State, that it is in the best interests of society that this person not be treated as a felony, we, by this, are codifying the -- the practical experiences of prosecutors every, single day, and we are stating, as a matter of public policy, that, yes, you, Mr. Prosecutor, should take this opportunity, in line with the constitutional provision of balancing the seriousness of the offense with the -- objective of restoring the offender to useful citizenship, and make a determination to proceed as a misdemeanor. It is important to understand that as we stand here today, the law has reverted back to prior to December 1 of 1994. What we are doing in this legislation is enhancing over sixty classifications of -- of crimes in enhancing the penalties on those crimes. What we are also doing, by this legislation - and I say in a very -- unequivocally - we are acting in conformance with the call of those a couple of weeks ago that we need to act and act expeditiously to ensure that the public safety, public welfare, public morals are protected. What we have hoped to do in Senate Bill -- or, Senate Amendment No. 3 to House Bill 1285 was to strike a reasonable compromise between balancing and competing interests that are laid out in the Constitution - that is, to be tough where we need to be tough and to exercise restraint where

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restraint is not only possible but warranted under the circumstances of the case. We would be in total compliance with that objective of restoring that individual, who has made the, perhaps, innocent mistake, to the possibility of being a useful citizen. There are those who have challenged this ruling on the basis that it is simply something that happened twenty-seven years ago and may not be the law as it exists in 1999. To them, all I can say is that their crystal ball is a heck of a lot better than my own, because, as I see it, what we have in this State is the Supreme Court, in a series of decisions, making the pronouncement that what we are attempting to do today is constitutionally permissible, it is constitutionally sound, there is -- there is consistent constitutional precedent for doing this since statehood, and that it is absolutely within the prerogative of the prosecutor to retain that discretion, in terms of the charging function. What we have said in the motion here is a -- a number of criterion that we are suggesting to prosecutors that they -- they may consider in determining whether or not this person should be charged with a misdemeanor or a felon. Before I get to the answering of questions, I would simply like to say this: That the process that we have suggested as a compromise is not a -- is not a process that came out of the blue; it was something that I, as a prosecutor, when I first started as assistant State's attorney, engaged in. It is something that was never challenged other than the cases that -- that I've cited, in which the challenge was specifically refuted. And most importantly - most importantly - I

believe that by the enactment of this legislation in its form, we are in -- in direct conformance with not only the call of the Governor, but also in direct conformance with Article I, Section 11, of the Illinois Constitution. Mr. President and Members of the Senate, it is for those reasons that I urge the adoption and passage of this bill, and that I -- I surely will answer any

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questions that may be posed to me.

PRESIDING OFFICER: (SENATOR MAITLAND)

Is there discussion? Is there discussion? Senator Molaro.

SENATOR MOLARO:

Thank you, Mr. Chairman. Before we ask a question or two, I would like a ruling of the Chair, because I have in front of me the proclamation by the Governor, and this is the first time since we've been down here, for four and half some days going on five, that a bill has been brought to 3rd Reading for an actual vote on 3rd Reading. Proclamation states that: such -- to consider only the reenactment of provisions contained in Public Act 88-680; such special session shall be limited to the consideration of House Bill 2711 and Senate Bill 391. Now as I look on the board, this is House Bill 1285, and it's not a reenactment of that Public

Act, so I would think that -- I would ask a ruling of the Chair that this bill is, in fact, being called out of order, that it's not part of the Proclamation and, therefore, out of order. So I'd like a ruling on the -- of the Chair, please.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Molaro, that request is in order. Let me -- let me visit with my Parliamentarian for a moment, and I will issue a ruling momentarily. Get back to you, sir. Further discussion? Senator Dillard.

SENATOR DILLARD:

Mr. President, to Senator Molaro's point, just a couple things I'd like to point out while you deliberate with the Parliamentarian. We believe that this bill -- or I believe that this bill is consistent, as long as the purpose of the Governor's call is followed. This Body, in 1979, under Democratic control, when Senator Rock was the Senate President, has used different bills, as long as they believed they were consistent with the call of the Governor for a Special Session. We have broad separation

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of powers arguments, which I will address when I speak to this bill in a minute, that allows us to choose our own bills within



the institution. And I don't believe we have to pick verbatim the bills that the Governor's Special Session call called for. And I would note, as I look at this proclamation that Senator Molaro referred to of Governor Ryan, that it's interesting to note that the Proclamation states that the General Assembly shall be convened, and I quote, "to consider only the reenactment of provisions contained in Public 88-680 (as subsequently amended)". But Public Act 88-680 contained language creating the criminal offense of WIC benefits fraud and established a range of penalties and forfeitures for such offense, and apparently the Governor himself and his staff has abandoned this WIC provision of the original Safe Neighborhoods bill. So I think we're consistent with the -- the Governor's call with this bill. Certainly we have institutional powers, separation of powers, to call our own bills and to pick what bills we use here. It's been done before. And I also point out, in 1972, the Attorney General issued the -- an opinion, and I quote from the following: Finally, my conclusion is that a Special Session may act on pending bills previously acted upon or introduced and pending in regular Session so long as in compliance with the passage of requirements, if (a) subjects are within the call of the Special Session,... So, back in 1972, I believe the Attorney General opined, we can pick our own bills, as long as they generally conform to the Governor's call.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Molaro, I am -- I am prepared to -- to rule. Subsection (b) of Section 5 of Article IV of the Illinois Constitution states, in pertinent part, and I quote: "The Governor may convene the General Assembly...by a proclamation

stating that {sic} the purpose of the session; and only business encompassed by such purpose...shall be transacted." Unquote. The

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subject matter of the bill at hand, containing provisions of Public Act 88-680, falls within the purpose of the Special Session, as stated in the Governor's Proclamation. Further, the -- the bill is in compliance with passage requirements and, therefore, is properly before this Body. Is there further discussion? Senator Molaro.

SENATOR MOLARO:

...President, I'm not going to re-debate this. We've been here for four days. We know everything. So what I would ask though, is I would ask for an appeal of the ruling of the Chair.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Molaro has offered an appeal of the ruling of the Chair. The question is, shall the ruling of the Chair be sustained. All those in favor of sustaining the ruling, vote Aye. All those opposed to sustaining the ruling, vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary. On that question, the Ayes are 30, the Nays are 25. And having failed to

receive the necessary three-fifths negative votes to appeal, the appeal fails, and the ruling of the Chair is sustained. Is there further discussion? Senator -- Senator Obama.

SENATOR OBAMA:

Thank you, Mr. President. Will the sponsor yield?

PRESIDING OFFICER: (SENATOR MAITLAND)

Indicates he will yield, Senator Obama.

SENATOR OBAMA:

Senator Petka, the -- I appreciate the efforts that, you know, you've been making and a number of other people have been making, to try to arrive at some sort of compromise on this issue, but I did want to ask you just a question on -- on the point of prosecutorial discretion. Because it's not clear to me that that's really what was at issue this morning or what may be at

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issue with respect to this amended version of the bill. It's my understanding that prosecutorial discretion applies to any piece of criminal law across the board. Right? So if you, as a State's attorney, arrest somebody for violence that results in death, you can charge that person, potentially, with first degree murder, second degree murder, involuntary manslaughter. Based on a variety

of criteria, you may make that decision, or you may decide that it was an accident or self-defense and not charge the person at all. Is that correct?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka.

SENATOR OBAMA:

Now, the -- the point, I think, that many of us were making -- and this is not so much a question, I guess, as a statement. The point that a number of us were making, including myself, this morning when we were considering the earlier version of the bill was not to suggest that, in fact, prosecutorial discretion does not exist. And I think, to the extent that that's all that Morrissey stands for, it's still good law. Obviously, prosecutorial discretion exists. The question is whether we, as a Legislative Body, can pass laws that do not provide either the State's attorneys or the average citizen, who just wants to pick up the Illinois Criminal Code, some guidance as to what exactly constitutes a crime and what the penalty will be. In other words, my suggestion -- and -- and the rule of law with respect to proportionality is a question of our legislative responsibilities. It's not an issue of whether or not the State's attorney has discretion, but it's, rather, whether we have an obligation in passing laws to offer clarity and transparency to the general public when they're going about their business and everyday lives. And that, my suggestion would be, has always been a requirement of all criminal laws: to ensure that people know when they're

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breaking the law and when they're not breaking the law. And that was the concern initially on the bill. Now, I recognize that this amendment attempts to fix that by listing out some factors that would distinguish between good guys and bad guys. I've heard this term quite a bit: good guys and bad guys, or honest people versus the gangbanger. Of course, the problem is, for many citizens, maybe they don't fit neatly into the category of honest guy or gangbanger. All right? There may be people who are carrying a gun for their protection. They're not gangbangers, but maybe they're not always perfectly honest citizens. And so part of our obligation in passing these laws, I think, is to be as clear as possible. And I think everybody on both sides of the aisle would wish for that sort of clarity. I think if you are a proponent of the notion that people should be able to have guns in their cars or on their persons when they're traveling the highways and byways of Illinois, you want that clear so that that person is not potentially going to be harassed. Conversely, if you think that, in fact, that is a bad idea, that that will result in more violence - and that happens to be my personal opinion - then you also want that to be clear. But either way I think one of our obligations, particularly in the criminal law, has to be to offer clarity. If we don't have that clarity, then people are vulnerable. Not -- it's not -- and it's not simply an issue of

prosecutorial discretion; it's a simple issue of good, sound public policy. My reading of this bill is that the average citizen still does not have clarity as to when he is breaking the law and when he is not breaking the law. And my suggestion would be, despite the valiant attempts that have been made today to try to clean this piece of legislation up, that we should simply make a substantive decision as to whether we are going to make this a felony or make it a misdemeanor. And I'm still puzzled as to why we haven't called the original bill. There are Members of this

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side of the aisle who agree with the notion that, in fact, you should be able to carry a firearm. I happen to disagree with them personally, but I respect their ability to vote the interests of their constituents. I think the same is true on the other side of the aisle. And I see absolutely no reason why we should not simply vote on a bill that goes one way or another. If the felony provision fails, then it retains as a misdemeanor and the public will know where each of us stand, and if they want to make a decision about us and where we stand on this issue, then they will be able to do so during election time.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Molaro, I apologize to you. When you asked for the appeal of the ruling of the Chair, you also wanted to debate the bill, and -- and I will recognize you now, sir.

SENATOR MOLARO:

Thank you. That was fine. I -- will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR MAITLAND)

Indicates he will yield, Senator Molaro.

SENATOR MOLARO:

Senator Petka, you're talking about this 1972 decision and that was fine. But when -- when did we recodify the criminal law that we went to Class 1, 2, 3, 4, Class X felonies, A and B misdemeanors, where there were special sections for sentencing? What year was that?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka.

SENATOR PETKA:

We began, as you say, recodifying it -- I -- I imagine you're talking about when we started heading towards mandatory sentencing and Class X. That -- I believe the Class X legislation was during my first term as a State's attorney. It was 1978.

SENATOR MOLARO:

When we...

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Molaro.

SENATOR MOLARO:

When we redid aggravated battery, did we leave in the dual sentencing that it could be -- did it say, then, Class A misdemeanor or Class 4 felony? Or did we just make it a felony or did we just make it a misdemeanor, or did we leave both?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka.

SENATOR PETKA:

Actually, prior to our Class X, and I believe it was 1975, we -- we eliminated the -- the dual misdemeanor/felony classification and made aggravated battery a Class 3 felony.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Molaro.

SENATOR MOLARO:

Well, is there anywhere else in Chapter 720 or anywhere else in the Criminal Code - so we know what we're talking about, I won't quote chapters - anywhere else in the Criminal Code, 720, that we talk about misdemeanor or felony and -- and we keep it open that it's a felony, we have it that State's attorney could make the same predicate act a misdemeanor? Is that codified in -- anywhere in 720?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka.



SENATOR PETKA:

Senator, we do not have that in any other portion of the Criminal Code and...

SENATOR MOLARO:

Well, thank...

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SENATOR PETKA:

Well, would you...

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Molaro.

SENATOR MOLARO:

I'm sorry. I thought you were done. Let me ask a different question then, if we don't have it anywhere else. Or, this is more of a comment; then maybe you can re-comment on this. It seems to me that we've been here the last four or five days, the biggest problem we're having is -- we're not really debating a bill over money or districting or politics or government or schools. Seems like we're having a philosophical debate. You know, it's like a debate on abortion. Very, very, very, very difficult debate when it comes to guns and -- and abortion. It's more philosophy than anything else. The biggest thing -- so we can

be clear on this - seems to be Section {sic} (subsection) 4 of the unlawful use of weapons. Even in our caucus, everybody seems to dislike the crime being called "unlawful use of weapons". They'd love to use the word "possession". You just said that. So, number 4, and this is -- to me, Section 4 is the biggest problem here. It says -- this is unlawful use of weapons - you commit a crime when you do this: carry or possess in any vehicle - any vehicle - or concealed on or about his person except when on his land or in his own abode or fixed place of business any pistol, revolver, stun gun, taser or other firearm. That's it. All this other stuff you can throw out. That's it. Can you have a gun in your car? Can you have a gun on your person? Can you have any other firearm in your car? That seems to be it. Now, the question becomes, what do you do with that, as you like to call it, "unlawful possession"? Certainly isn't unlawful use; you're not using it. Unlawful possession. Should it be a felony or should it be a misdemeanor? Well, it was a misdemeanor for many, many

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years in this State - five, six years ago, whenever it was. Under the Safe Neighborhood Act, we made it a felony. Couple of months ago, the Supreme Court said: Well, you could make it a felony,

you could make it a misdemeanor; we don't legislate. But what we are telling you is, in this bill, Public Act whatever the number is, you had two or three subjects. So we -- we rule it unconstitutional. The Governor then calls for a Special Session and says, let's call this to reenact it exactly like it was, on two bills so we have dual subject. Now, we come here and debate number 4. Should it be a felony or should it be a misdemeanor? We've tried for four and a half days to work out a compromise. Everybody's been working very, very hard. The Leaders are meeting constantly, the Governor is meeting constantly, to compromise. We are certainly not going to debate here -- maybe someday, hopefully, soon, not three weeks from now, we may debate whether it should be a felony or a misdemeanor. I'm not even going to go there on this particular bill. What you're trying to accomplish is noble. You're trying to give us both. Let's make it a felony and a misdemeanor. That's noble. Unfortunately, with that -- we can't do that in the criminal law. It's not fair. I'm not going to go to constitutionality, 'cause I don't have a crystal ball either. I have no idea if it's constitutional or not. But the reason we don't have it anywhere else in the law is because it's not clear when you make it either way. So the point - and this is the last point that I'll try to make - is that what we tried to do on this bill is sort of like what Solomon the Wise did. We all know the story from the Bible. You have the baby. Two people are claiming that it's their baby. Well, Solomon says, "Here's what I'll do: I'll cut the baby in half." Now, he was never really going to cut the baby in half. He just wanted the real mother to jump up. And we all know the story: She did. ...and this is a good bill to try to move us towards some compromise.

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Unfortunately, no one's blinking, and so now we're going to have to go ahead and cut this baby in half and say we're going to call it both a felony and a misdemeanor. You can't do that. We have to take the tough vote. Someday, somewhere, whether it be tomorrow, tonight, two weeks from now, there will be a bill -- or, after Christmas or whenever, there will be a bill that says carrying or possessing a firearm in your car or on your person, not in your house, is a felony: You vote Yes or you vote No. It's a misdemeanor: You vote Yes or you vote No. We have been doing this for the last twenty-five years, voting Yes or No on every bill, whether it should be a felony or whether it should be a misdemeanor. It is a mistake, even though we've been here four days and even if we have to be here another four days or another hundred days, to say the best way to do this is to make it both so we could go home. That's not right, that's not correct, and it's not fair. Let's take the tough vote and either vote it a felony or vote it a misdemeanor. You cannot have your cake and eat it too. Thank you.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? Senator Weaver.

SENATOR WEAVER:

I would move the previous question.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Weaver has moved the previous question. There are eight additional speakers. Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

Mr. President and Members of the Senate, I think this bill is probably the best one we've had all along, because at least it gives an option. I do not want to see good citizens who have the first time unlawful possession of arms be classified as felons. And I hope that every State's attorney of this State will have

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good conscience and will have good common sense and evaluate each case individually. I can honestly tell you that at least this is a step in the right direction. I concur with Senator Petka's remarks. I concur with Senator Dillard's remarks. And speaking about the -- 1979 and other years, I was here. I remember what the Democrat Senate did. And I can tell you, my colleague on the other side, that I think what you're doing here is giving the State's attorney an option, a worthwhile option. A person who has

a good record, why should he be deemed as a felon right off the bat? At least the State's attorney has got some guidelines, and this is the best bill I've seen thus far and I urge favorable consideration from all of us. Making it a misdemeanor, that's the -- that's the best possible thing we can do for good people.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? Senator Trotter.

SENATOR TROTTER:

Thank you very -- thank you very much, Mr. President. I wasn't here in 1972, but I understand, Senator Petka, that you said they changed the Constitution. I guess the question I would have is -- one is, to my knowledge, they have not changed the U.S. Constitution. The last time this bill was debated, in 1994, I voted No for it, for the same reason I'm going to vote No on this issue today, because it was a issue of equal protection. At that time, I felt that there was going to be some unfair enforcement of that law. We have seen, by the statistics, which another Member, I'm sure, will give you those statistics later, that we have seen a disproportionate number of individuals of color arrested under this particular law and of -- of the one that we just struck down in our courts. So the question I ask you, Sir, and in a hypothetical kind of way but with a question still: I'm white; you're black. So you see how hypothetical this is. So the question being is, if we're in the same car, going to the same

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party, we both have the same gun in our cars, you would assume that if we got stopped by the same police officer, that we would get the same treatment. Now, under federal law, it says under the Fifth Amendment and the Fourteenth Amendment that there is equal protection under the law, which is the Fifth Amendment; and the Fourteenth Amendment says, in fact, that the -- the Constitution makes the Fifth Amendment right to equal protection applicable under State laws. So how does our law, the ones we're trying to pass, supersede that federal equal protection law in the Fourteenth -- in the Fifth and the Fourteenth Amendment?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka.

SENATOR PETKA:

Senator, what this law is doing is advancing a concept that the individual who is out there as an elected official - be it a sheriff, be it a State's attorney of a county - has the opportunity to charge individuals based upon all of the factors that we laid out in this section dealing with the unlawful use of a weapon, that they would take a look at the prior criminal history, the age of the defendant, the presence of drugs or lack of presence of drugs, whether the defendant is a member of any gang, other relevant circumstances which might possibly mitigate the seriousness of that offense, the totality of the facts and circumstances surrounding the offense. All we can hope to do,

Senator, with all due respect, is simply lay out a framework of public policy as we see it, give our direction as to the way that we believe that the laws that pass would give reasoned - reasoned - opportunity to make discretionary decisions. But we -- and this is something that needs repeated over and over again: This is a system of checks and balances. We have -- the Executive Branch of government is responsible for enforcing what we say is public policy, and the Judicial Branch of government makes sure that when

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the laws are enforced, that they're enforced in conformity with not only the Illinois and federal Constitutions, but also in conformity with -- with public policy and that they do not go out -- go past what is -- what properly can be the subject matter of regulation.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Trotter.

SENATOR TROTTER:

That's fine. No need to go on debating. As said, it gets into a philosophical thing. So, thank you very much for your answers.

PRESIDING OFFICER: (SENATOR MAITLAND)



Further discussion? Senator Hendon.

SENATOR HENDON:

Thank you, Mr. President. I know the hour is late and I'll be as brief as I possibly can. I'm one of those people who are torn by this amendment because -- often Senator Petka and I agree on things, and this is just one of those times when we agree halfway and halfway we don't. It amazes me when I hear some of my colleagues get up and talk about representing your district, and they won't represent their own. I'm going to represent my district. This legislation -- it seems like we've forgotten that this is Christmastime, and I -- one thing I learned about Christmas is you don't get everything you want under the tree. And it seems that some people want all or nothing at all. Senator Petka is at least trying to give us something, but it falls short because it makes the offense a felony and it says, well, it can be a misdemeanor or it can be a felony. But we have a responsibility when we see that the law is not being equally let out to all people to do something about it. That's why I'm in favor of first time possession by a law-abiding citizen, regardless of race, creed or color, to be a misdemeanor, because the statistics bear

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out what I'm about to say. Since the last four years, when we've had this on the books, hardly anyone is going to prison and getting felonies but black people, Latinos. In fact, black women are -- in Chicago are going to jail under this at a much more alarming rate than white men, and we all know that black women don't have as many guns as white males. I hate to reduce this discussion to this, but we have to debate -- put this in the record because it's part of the record. In a color-blind society, yes, make it any discretion, but we -- we just don't have that. In Chicago, sixty-three percent of all those arrested are African-American males; another nine percent, African-American females; twenty percent, Latino. And we found out that of those who are arrested, when the State's attorneys make the deals, they deal down all -- all of the -- just about all the white males and they send the black women and the black males to prison. Once you get that felony charge on your record and you try to go get a job, you can't get a job. If you -- they ask you, "Have you ever been charged", not "Have you ever been convicted". And if they find out that you've been charged and you didn't put it down, you lose your job. And what happens then? You end up on some social service program. Now, I'm just as tough on crime as anyone in this room. But I've heard -- in the last speech of Governor Edgar, he took a line that I brought out on this Floor, that we need -- we need to be smart on crime, not just tough against crime. Use our brains. Use our intelligence. This is one of the most intelligent bodies in America. I believe that in my heart, but sometimes we get caught up 'cause everybody wants all of what they want or else we'll be here forever. Well, I talked to my four-year-old daughter today and she said, "Daddy, are you going

to miss Christmas?" I said, "Baby, if I have to, then I will miss Christmas." But I'll share Christmas with all of you. We'll find a way to entertain ourselves. But when it's all said and done, we

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have to look at, is this law being equally applied to everybody? Because of that, I'm going to have to vote Present today. And I hope at some point we will come up with something that is logical and reasonable, where regardless of race, creed or color, everyone will get the same treatment under the law.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? Senator Dudycz.

SENATOR DUDYCZ:

Well, thank you, Mr. President. Ladies and Gentlemen, I have a -- a unique perspective on this particular piece of legislation. As you know, I am still a working Chicago police detective, and I call tell you firsthand some of the problems of our community, the community I serve, and those are the problems shared by many of your communities as well. As a matter of fact, if we weren't here this evening or this week, both Senator Munoz and I would be both working on the west side of Chicago, protecting Senator Hendon and his constituents, two of whom happen to be my mother and father.

Now, we need safe -- the Safe Neighborhood Act to be resurrected, to be reenacted and put back on the books. We need the increased penalties that come with the law. The punishment for at least sixty crimes are enhanced under this law, even those committed under the controversial unlawful use of weapons statute. Now, I'm the -- you may recall, those of you who were here five years ago, I'm the original sponsor of the Safe Neighborhoods legislation. I like that bill. I still believe it's constitutional, the intent was constitutional, and -- and if it was before me right now, I would be supporting it. I think we did the right thing five years ago and I wish we were doing the right thing today. But you know what? We're not facing that -- that dilemma now. We're -- our dilemma is House Bill 1285 and that's what we have to vote upon this evening. Now, is House Bill 1285 the perfect bill? No, it's not my bill. It's not exactly the way it was, but it's ninety-nine

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percent of what we had five years ago. And under this bill, as it was in the original Safe Neighborhoods bill, if you illegally carry or transport a firearm, you could spend one to three years in prison. And if you do it again, you'll be going from two to five years in prison. If you carry a firearm while trying to

conceal your identity, this bill raises the penalty to a Class 3 felony, which would mean two to five years in prison. And this bill, although not exactly, exactly the way I would have liked it, does raise the minimum sentences for committing a felony with a handgun, a machine gun or a semiautomatic from six to fifteen years. And it -- it does create the offense of gunrunning for the unlawful sale of guns. And, Ladies and Gentlemen, House Bill 1285 does get guns off our streets. This bill -- this bill cracks down on gangs, gang crimes, sex offenses, increased penalties for attempt murder, increases penalties for DUI cases which cause great bodily harm. No, it's not my bill, it's not the same, exact thing we voted upon five years ago, but, boy, it sure is pretty darn inviting. Ninety-nine percent of what we had then is before us this evening. And you know what? It gives our police officers, police officers such as Senator Munoz and myself, better protection out in the streets. It's a good bill. It's the only one that we're facing. Will we get another bite at the apple? I don't know. Maybe. Maybe not. But, right now, we are faced -- are we -- are we going to vote for increasing the penalties for our streets, for our families, or not? I would ask your support.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? For a second time, Senator Dillard.

SENATOR DILLARD:

Thank you, Mr. President. This time to the bill, and Merry Christmas and Happy Hanukkah to you all. I guess one of the positive things about this Special Session during the holidays is we got to spend a little more time with Senator Fawell and our

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colleague, Senator Berman. I'd like to focus on why we're here and who threw the streets of Illinois in peril, according to Mayor Daley and State's Attorney Devine and others. The reason is simply the Illinois Supreme Court. It's not Senator Philip, it's not Senate Republicans, it's not Governor Ryan, why we're here at this late hour. It's the Supreme Court who lowered the penalty to a misdemeanor from a felony for the provision that we're all caught up here tonight on. I know everybody wants to go home and it's late, but I think it's important to take a quick historical perspective of the real gunfight or divide that has developed between the Illinois Supreme Court and its disrespect and disregard and lack of deference to Mayor Daley, the City Council of Chicago, the Illinois General Assembly and Governors Edgar and Ryan. The bill before us is a reenactment of legislation our Supreme Court said violated the single-subject provision of the 1970 Illinois Constitution. In the first twenty-seven years of -- of this Constitution, all the Supreme Courts struck down only one bill as violative of this constitutional mandate. Starting in 1997, today's Court decided it would not follow the precedent of all these other Supreme Court justices, but essentially said: We're going to write a new law on the single-subject clause.

Since then it invalidated four bills and gave us a heightened new standard for the single-subject clause. In fact, this Supreme Court recently has struck down four times more single-subject bills than in all the other Supreme Courts combined. Now, I could understand this if the Legislature drafted our bills sloppier of late, but I would submit that we draft our bills today better than we ever have in the last twenty or twenty-five years in the General Assembly. We have professional Parliamentarians and lawyers in the Senate and in the House, of both parties, who I think are as fine of legal advice as we can get. Justice McMorro wrote the decision that brought us here today against the Safe

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Neighborhoods Law and she said in her written decision, and I quote, "That no matter how liberal, the single-subject requirement is construed, this Act", the Safe Neighborhoods Act, "was passed in violation of the single-subject clause of the Illinois Constitution." With all due respect to Justice McMorro and her colleagues, this is simply not true. In fact, two Appellate Courts found that this did not violate the single-subject clause, and so did Speaker Madigan, so did President Philip and so did the Parliamentarians of both our Chambers. The Chicago Sun-Times, in

an editorial on December 6th, said, in "The Subject is Crime", quote: "The Illinois Supreme Court got it wrong when it struck down the 1994 Safe Neighborhoods Act on the grounds that it is not limited to a single subject. This is simply not the case." End quote. The Sun-Times editorial board went on to say, quote, "Each piece of (the) legislation was directly related to criminal conduct, whether the crime involved weapons or welfare fraud." End quote. Now, I agreed with the Supreme Court when it struck down a couple of years ago when we tied in a sex offender law into environmental impact fees. I agreed with that decision. But other than that, this Supreme Court has repeatedly substituted its judgment or beliefs for that of legislators, Chicago aldermen, mayors and governors. Starting with tort reform, this Court totally disregarded our severability clause and tossed that entire Act out, or in its desire to play alderman or mayor, it struck down Mayor Daley's anti-street gang loitering ordinance from the City of Chicago. And this Supreme Court, unlike all its predecessors, has constantly substituted its judgment for that of all the other branches of government. It's time for a civics lesson, Ladies and Gentlemen. The General Assembly and the City of Chicago set public policy, not the courts. In the Truth-in-Sentencing Law that was tossed out last year, every provision of that bill came from Cook County, Jack O'Malley. He's



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the State's Attorney of Cook County. There was no logrolling and every piece in there would have easily passed on its own. And Truth-in-Sentencing dealt with the incarceration of prisoners, and the provision of that bill that the Supreme Court said violated the single-subject clause dealt with medical liens, but medical liens for inmates of the Cook County Jail. And to me, that's incarceration, that's inmate. So the Truth-in-Sentencing Law that they struck down also, I believe, was consistent. Justice Ben Miller, one of the best Supreme Court justices I've ever seen in my lifetime, said, in a dissent in the tort reform opinion, that we have broad powers of government in the Legislature to be exercised by the people through elected representatives in the Legislature. And he said, quote, "The Legislature enjoys broad power to change the current law and to modify and even eliminate statutory and common law rights and remedies." End quote. Now, Justice Miller went on to state that this new activist Supreme Court reached conclusions that are, quote, "...far different from what our predecessors and precedents require and that strike at the heart of the vulnerable and fundamental relationship between the Legislature and Judicial Branches." And he closed by saying, quote, "Stripped to its essence, the majority's mode of analysis simply constitutes an attempt to override, by judicial fiat, the considered judgment of the Legislature." End quote. And I say, amen. As a footnote, to see how the Supreme Court fights among itself on the single-subject clause, I invite you to read a recent case dealing with the Arangold Cigar Company that sued the State

of Illinois and in -- in October of 1999, the Court handed down a decision that actually upheld our 89th General Assembly State budget. Two justices, Justices Heiple and Harrison, dissented in that case and said, "Because today's majority opinion improperly renders the single-subject clause a dead letter, we respectfully dissent." And according to Justices Heiple and Harrison, the new

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Supreme Court doesn't even follow its own precedent in single-subject cases. Now, I used to get a little paranoid that is was only Republican-controlled General Assembly laws that went down the tubes across the street. But now they regularly toss out Mayor Daley's laws, the City of Chicago's laws and the House Democrats laws, too. So the Supreme Court not only wants to be judges, they want to play mayor, they want to play governor, they want to play alderman and they want our jobs, too. Outside neutral scholars have said the Illinois Supreme Court rules like no other. A professor and a former law school dean who has written the largest-selling case book, probably in the history of law schools, in a Loyola University of Law Journal article said that the Illinois Supreme Court had a long history of deference to the Illinois General Assembly until recently. And this week, in The

Chicago Tribune, an Indiana State University professor opined that our Court is very different from every other court in the United States on the treatment of the single-subject clause. This legislative bashing by our Supreme Court, I guess, bothers me even more because it comes from an embattled and a controversial Supreme Court. The Chicago Sun-Times alleges that the Court is improperly constituted because it hasn't been reapportioned in years. We all know the unfortunate Justice Heiple problems, the Baby Richard decision, the fact that, on three occasions, the Court would not allow a friend of the court brief to be filed in the major tort reform suit, but when business groups ran full-page ads in Chicago papers and in Springfield papers, they reversed their decision and let friend of the court briefs be filed. They recently struck down a law prohibiting the Court from accepting gifts from litigants or lawyers appearing before them, and they repeatedly strike down anti-gang loitering laws, sex offender registration laws, Truth-in-Sentencing, tougher baby killer penalties, and now the Safe Neighborhoods - all contrary to

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popular opinion. The State Supreme Court's conduct, to me, Ladies and Gentlemen, I believe leads the public to look down on the

justice system. Just last week or the week before last when we were here at the close of the Veto Session, on December 1st, the judicial system -- ramrodded a pension sweetener law for judges through the General Assembly, and then the very next day they hand down the Safe Neighborhoods Law -- or, the Safe Neighborhoods Law decision. The timing, to me, looks terrible, whether there's anything sinister at all. So I guess, to close, Mr. President: Again, we're here debating the felony provisions for some gun offenses because it's the Supreme Court that put us here. We didn't put us here. They love to nitpick us to no extent of other -- any other court in this history. And we don't tell them what color robes to buy or what color curtains to buy for their Chicago or Springfield chambers, and I would submit they ought to let us do our job here in the future, and that's represent the people of the State of Illinois in the General -- General Assembly, and they ought to go back to being judges, not mayors, governors or lawmakers. You know, this week, just finally, the Peanuts creator, Charles Schulz, decided that he was going to retire, and I couldn't help but think about the great scenes from those Peanuts cartoons where Charlie Brown runs up to kick the football and they pull it out from underneath him, and he goes down in a heap. Well, I would submit that the Supreme Court plays us like that cartoon character, where we pass laws, and at the last moment, they love to pull it out from -- from our feet and the people of Illinois' feet. And I say it's "good grief" time. It's time to wake up like the blockheads in those cartoons and say, "Hey, this is a Supreme Court that repeatedly has overstepped its bounds when it comes to lawmaking in the State of Illinois." And

I would urge an Aye vote on House Bill 1285.

PRESIDING OFFICER: (SENATOR MAITLAND)

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Further discussion? Senator Jones.

SENATOR E. JONES:

Yeah. Thank you, Mr. President. And I -- I will attempt to be brief on this subject matter, and let me apologize to all my colleagues on both sides of the aisle because, unlike Senator Hendon, I don't want to spend Christmas with you. But we are here -- we are here because -- because the spotlight has been placed on this Body as it relate to our packaging bills together. And I listened to the great orator, my good friend, talk about the Supreme Court bashing and so forth. But there have been numerous Supreme Court decisions as it relate to the single-subject rule. And since the spotlight is on us, in the meetings that we had in the Governor's Office - myself, Mike Madigan, Lee Daniels, and Pate - we all met in the Governor's Office several times. I wrote a letter to the Attorney...

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Jones. Senator Jones. Excuse me just a minute.  
Senator Jones. Ladies and Gentlemen, this is ridiculous. Please

sit down and quit talking. Give Senator Jones your attention, on both sides of the aisle, Senator Demuzio. I'm addressing both sides of the aisle. Senator Jones, proceed, please.

SENATOR E. JONES:

On this important subject which has us here two weeks before Christmas, sitting around four and a half days because the Supreme Court made its decision that you're going to follow the dictates of the Supreme Court as it relate to the single-subject rule. So the spotlight is on us, which prompted me to write a letter to the Attorney General, questioning whether or not and asking for an opinion as it relate to the call for the Special Session - the Proclamation issued by the Governor. He called me, he called the Senate President, he called the Speaker of the House, he called the Minority Leader, he called the Governor, and said that long as

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the legislation is pending, he will not do it in writing; however - and listen very carefully - however, if you are successful in this endeavor, he will issue an opinion that it is in violation of the Constitution. So, therefore, this legislation before us is null and void. The Attorney General of the State of Illinois. The attorney for the State. Since the spotlight is on us,

wouldn't it behoove us to attempt to do the right thing? Not deal with the merits of the legislation, but do the right thing. At least attempt to put the bill in 391 or 2711. Do the right thing. It makes me believe that the whole intent of 1285 is for it to pass, to get to the Supreme Court and have the Supreme Court knock it down as being unconstitutional and then you'll have what you want - a misdemeanor, as the current law is right now - a misdemeanor. So let's quit kidding each other. I'm not going to stand here and bash the Supreme Court, but anytime a decision come down 7-2 on this subject matter, I think we should listen. All the great constitutional lawyers in here, you know, have been practicing a number of years, but one thing I know is this: When it is a unanimous decision, we should at least listen. If the Attorney General -- he's a fine man from DuPage County, a great Republican -- he called President Philip, he called the Governor, he called Speaker Madigan, he called Minority Leader Lee Daniels, he called me in response and said: This bill is outside the call of the Proclamation; don't proceed. And when we have legislation before us which we could act on, we refuse to act. Not getting into the merits of the bill. And the reason why I talk that way, because Senator Dillard talked all about the -- Supreme Court, all the things they're doing wrong, as far as the people of the State of Illinois. But one thing they are telling us to do is follow the Constitution, and we are not following that, as it relate to this bill. And we've been sitting around here four and a half days and going back to the same old thing that caused us to be

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here in the first place, in violation of the Constitution. Let's do the right thing. I urge the Members on this side to vote No.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? Senator Philip.

SENATOR PHILIP:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. I don't know if I've ever had four more frustrating days than I've ever had the last four days. And if you think it's been a pleasure to be here, you're sadly mistaken. We are now working on our sixth, seventh or eighth compromise, and to tell -- tell you the truth, we are extremely frustrated. I want to thank Senator Hawkinson and Senator Petka for very quietly, behind the scenes, working to put these -- this together. They're both retired State's attorneys, they're both outstanding lawyers. They know more about the criminal system and how it works than probably anybody in this Chamber, and I want to congratulate them and thank them personally. Now, if you'll remember, what -- what did the Mayor and the Governor say? They want us to reenact the Safe Neighborhood Act. We have exactly the way it was passed in 1994, without any changes whatsoever. It's tough on muggers, it's tough on gangbangers. It's tough on criminals, period. Everything they have asked for is in this amendment. Secondly, what did the Governor say all along? The charge has to be a felony for illegal



possession of firearms. So what -- what have we done? We have said this: That a State's attorney, after the facts, can charge you with a -- automatically charge you with a felony. He can review the facts, and if he so deems, lower it to a misdemeanor. Now, that's what they're doing now. That's exactly what most of them -- doing now. So what have we done? We have done exactly what the Mayor wanted, exactly what the Governor wanted. Then we have the Attorney General saying he thought it might -- it might be unconstitutional, but didn't want to give us a written opinion.

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But he said to me, it's up to the courts, not the Attorney General, not the General Assembly; it's up to the courts, nobody else. We have answered that in our amendment. That's what our lawyers tell us, that's what our staffs tell us. So all the three arguments we've had against Senate Amendment No. 3 to House Bill 1285, in my judgment, have been answered. We're tough on criminals, as tough as the Mayor wanted it. We protect the first-time offender who has no criminal record whatsoever. We've given the Governor, the Mayor, the Attorney General everything they've asked for, everything they requested. And I would respectfully say House Bill 1285, as amended, does the job. Stand

up to the plate and be counted.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka, to close.

SENATOR PETKA:

That's certainly a tough act to follow. He had my -- the words that I had written down in connection with my final summary. But I would just like to, in very brief summary fashion, address a couple of comments that were made by Senator Trotter and Senator Hendon. With all due respect, once we place legislation of this type on the books, we literally, if we put -- do it right, are placing our trust and confidence in people who are elected to do the job and who take, literally, the same oath that we take. The arguments that both of you gentlemen made in connection with this don't deal with the subject matter beforehand, because what we have tried to do is to ensure, to make sure, to do everything reasonably and humanly possible that when a discretionary decision is made, that it's not going to be made on an arbitrary factor of race; it's going to be made on definable factors that we have set out in this piece of legislation. So if you truly want to accomplish exactly what you -- you have stated here, what you'd like to see done, this is the bill for you. It won't get any

better than this. We have tried. We have tried to accommodate your wishes. We've listened to the testimony in committee. For those of you who are troubled by discretion in -- in charging of a -- a felony or a misdemeanor, this General Assembly, over the last twenty years, has granted enormous discretion on matters involving, literally, life or death. Any State's attorney in the State today can make a decision by simply signing a sheet of paper and -- and stating a charge that will determine whether or not a person may actually be forced to be put on trial for his life. And if not, he can be sentenced, under the same set of circumstances and operative facts, to as little as twenty years. Now, if we allow a range of discretion from within -- from a person who can be sentenced from twenty years in prison up to losing his life, why should we be concerned about whether a charge is upped to a misdemeanor or no more than three years in jail? It doesn't fit. It doesn't make any sense. And the fact of the matter is that it is simply a smoke screen. The cases that we have cited, the theory that we have cited, the statutory scheme that we hope and that we believe should be enacted is laid out in -- in House Bill 1285. It's simple. We'll answer the call of -- of the Governor, we'll answer the call of the politicians who -- who have called press conferences. We are going to do exactly what they've asked us to do, and we're going to do it in conformity with the Illinois Constitution, with constitutional history on our side, the people of the State of Illinois on our side. And with that, I will simply say the right thing to do, right here, right now, tonight, is to vote green.

PRESIDING OFFICER: (SENATOR MAITLAND)

The question is, shall House Bill 1285 pass. Those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary. On that question, there are 31 Ayes,

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21 Nays, 5 Members voting Present. House Bill 1285, having not received the required three-fifths majority, is declared failed. Senator Demuzio, for what purpose do you arise, sir?

SENATOR DEMUZIO:

I just had a parliamentary inquiry, Mr. President. Now that the Governor has issued a Proclamation for a Second Special Session, are we sine dying the First Special Session tonight or...

PRESIDING OFFICER: (SENATOR MAITLAND)

The answer is no. Senate will stand at ease. Senator Karpiel, for what purpose do you arise?

SENATOR KARPIEL:

I'm sorry, Mr. President. I would like to announce a Republican Caucus immediately in Senator Philip's Office.

PRESIDING OFFICER: (SENATOR MAITLAND)

Republican Caucus immediately in Senator Philip's Office.

Senator Jones, do you want -- you don't want one? All right.  
Senate will stand at ease until the call of the Chair.

(SENATE STANDS AT EASE/SENATE RECONVENES)

PRESIDENT PHILIP:

The First Special Session will convene. If there's any further business to come before the Senate -- if not, Senator Weaver moves that the First Special Session of the Senate stand adjourned until 1 o'clock, Friday, December 17th.